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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[AU Docket No. 19-61, GN Docket No. 12-268, MB Docket No. 16-306; DA 19-229]

Auction of Construction Permits for LPTV and TV Translator Stations; Comment Sought on Competitive Bidding Procedures for Auction 104

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; proposed auction procedures.

SUMMARY: In this document, the Incentive Auction Task Force and Media Bureau, in conjunction with the Office of Economics and Analytics, announce an auction of construction permits for low power television stations and TV translator stations. This document also seeks comment on competitive bidding procedures and proposed minimum opening bid amounts for Auction 104.

DATES: Comments are due on or before April 15, 2019, and reply comments are due on or before April 29, 2019. Bidding for low power television station and TV translator station construction permits in Auction 104 is scheduled to begin on September 10, 2019.

ADDRESSES: Interested parties may submit comments in response to the AU Docket No. 19-61, GN Docket No. 12-268, and MB Docket No. 16-306 by any of the following methods:

- *FCC's Web Site:* Federal Communication Commission's Electronic Comment Filing System (ECFS): <http://www.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, or audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

For detailed instructions for submitting comments, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For auction legal questions, Lynne Milne in the Office of Economics and Analytics' Auctions Division at (202) 418-0660. For general auction questions, the Auctions Hotline at (717) 338-2868. For LPTV and translator station service questions, Shaun Maher at (202) 418-2324 or Hossein Hashemzadeh in the Media Bureau's Video Division at (202) 418-1658.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document (*Auction 104 Comment Public Notice*), AU Docket No. 19-61, GN Docket No. 12-268, MB Docket No. 16-306; DA 19-229, released on March 29, 2019. The complete text of this document, including attachments, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The complete text of this document and related documents also are available on the Internet at the Commission's website: www.fcc.gov/auction/104, or by using the search function for AU Docket No. 19-61, or for GN Docket No. 12-268, or for MB Docket No. 16-306 on the Commission's ECFS web page at <http://www.fcc.gov/ecfs/>.

All filings in response to the *Auction 104 Comment Public Notice* must refer to AU Docket No. 19-61, GN Docket No. 12-268, and MB Docket No. 16-306. The Incentive Auction Task Force (IATF), Media Bureau (MB) and the Office of Economics and Analytics (OEA) strongly encourage interested parties to file comments electronically, and request that an additional copy of all comments and reply comments be submitted electronically to the following address: auction104@fcc.gov.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing ECFS: <http://www.fcc.gov/ecfs>. Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission (FCC). All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to the FCC Headquarters at 445 12th Street SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. ET.

- All hand deliveries must be held together with rubber bands or fasteners. Any envelope or box must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

Synopsis

I. INTRODUCTION

1. The construction permits available in Auction 104 are those that remain mutually exclusive (MX) under previously-announced procedures governing the post-incentive auction for low power television (LPTV) stations and TV translator stations (collectively referred to as LPTV/translator stations) and involve six groups of nineteen stations. Auction 104 is a closed auction; only those individuals or entities listed in Attachment A of the *Auction 104 Comment Public Notice* are eligible to participate in this auction.

II. BACKGROUND

2. Certain LPTV/translator stations were displaced from their authorized channels by the broadcast incentive auction (Auction 1000) which repurposed 84 megahertz of spectrum in the 600 MHz band that had been allocated for flexible use broadcast television and resulted in the reassignments of certain full power and Class A television stations. The Commission therefore adopted procedures for

LPTV/translator stations to apply for new channels and took other steps to mitigate the impact of this displacement.

III. CONSTRUCTION PERMITS IN AUCTION 104

3. Auction 104 will resolve by competitive bidding MX engineering proposals for up to six LPTV/translator construction permits. The MX groups listed in Attachment A of the *Auction 104 Comment Public Notice* are the groups of MX engineering proposals that remain after an opportunity to resolve mutual exclusivity through settlement or technical modification of engineering proposals. The MX engineering proposals listed in Attachment A to the *Auction 104 Comment Public Notice* are subject to the Commission's competitive bidding rules and procedures. See 47 CFR part 1, subpart Q; see also 47 CFR 73.5000, 73.5002-73.5003, 73.5005-73.5009.

4. An applicant listed in Attachment A may become qualified to bid only if it complies with the auction filing, qualification and payment requirements, and otherwise complies with applicable rules, policies, and procedures. Each listed applicant may become a qualified bidder only for those constructions permits specified for that applicant in Attachment A to the *Auction 104 Comment Public Notice*. Each of the engineering proposals within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A. Under the Commission's established precedent, once mutually exclusive short-form applications are accepted for a construction permit, and thus mutual exclusivity exists for auction purposes, an applicant cannot obtain a construction permit without placing a bid, even if no other applicant for that particular construction permit becomes qualified to bid, or in fact places a bid.

IV. PROPOSED BIDDING PROCEDURES

5. OEA in conjunction with MB seek comment on a variety of auction-specific procedures relating to the structure and conduct of Auction 104.

A. Auction Structure

6. *Simultaneous Multiple Round Auction Design*. IATF, MB and OEA seek comment on

the use of the Commission's standard simultaneous multiple-round auction format for Auction 104. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit.

7. *Bidding Rounds.* Auction 104 will consist of sequential bidding rounds, each followed by the release of round results. The Commission will conduct Auction 104 over the Internet using the FCC auction bidding system. Qualified bidders will also have the option of placing bids by telephone through a dedicated auction bidder line.

8. IATF, MB and OEA seek comment on the proposal to retain the discretion to change the bidding schedule to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors, may change. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

9. *Stopping Rule.* To complete bidding in the auction within a reasonable time, pursuant to CFR 1.2104(e), it is proposed to employ a simultaneous stopping rule approach for Auction 104, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding would close on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or, if bid withdrawals are permitted in this auction, withdraws any provisionally winning bid which is a bid that would become a final winning bid if the auction were to close in that given round. Thus, unless alternative procedures are announced, under the proposed simultaneous stopping rule, bidding will remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the bidding in this auction will last.

10. Further, the following options were proposed as alternatives during Auction 104. (1) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bid on a construction permit for which it is not the provisionally winning bidder, which means that, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open. (2) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bid on a construction permit that already has a provisionally winning bid, which means that, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not already have a provisionally winning bid) would not keep the auction open. (3) Use a modified version of the simultaneous stopping rule that combines options (1) and (2). (4) Use a special stopping rule that would close the auction after a specified number of additional rounds to be announced in the FCC auction bidding system. If this special stopping rule is invoked, bids are accepted in the specified final round(s), after which the auction will close. (5) The auction would remain open even if no bidder places any new bid, applies a waiver, or withdraws any provisionally winning bid (if withdrawals are permitted in this auction). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

11. IATF, MB and OEA propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, it is likely that there will be an attempt to change the pace of the auction. For example, the pace of bidding may be adjusted by changing the number of bidding rounds per day and/or the minimum acceptable bids. IATF, MB and OEA propose to retain the discretion

to exercise any of these options with or without prior announcement during the auction. IATF, MB and OEA seek comment on these proposals.

12. *Auction Delay, Suspension or Cancellation.* Pursuant to 47 CFR 1.2104(i), IATF, MB and OEA propose that they may delay, suspend, or cancel bidding in Auction 104 in the event of a natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. Auction 104 participants will be notified of any such delay, suspension or cancellation by public notice and/or through the FCC auction bidding system's messages function. If bidding is delayed or suspended, IATF, MB and OEA may, in their sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause IATF, MB and OEA to delay or suspend the auction. IATF, MB and OEA will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply activity rule waivers. IATF, MB and OEA seek comment on these proposals.

B. Auction Procedures

13. *Upfront Payments and Bidding Eligibility.* IATF, MB and OEA seek comment on the upfront payment amounts proposed in Attachment A of the *Auction 104 Comment Public Notice*, which were developed by taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits. The upfront payment is a refundable deposit made by an applicant to establish eligibility to bid on construction permits. Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding.

14. IATF, MB and OEA request comment on the proposal that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. Under this proposal, each construction permit will be assigned a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed in Attachment A of the *Auction 104 Comment Public Notice*. The number of bidding units for a given construction permit is fixed and does not change during

the auction as prices change. If an applicant is found to be qualified to bid on more than one permit in Auction 104, such a bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units.

15. *Activity Rule.* To ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. IATF, MB and OEA request comment on the proposal for a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 100% of its bidding eligibility. A bidder's activity in a round will be the sum of the bidding units associated with any construction permit upon which it places a bid during the current round and the bidding units associated with any construction permit for which it holds a provisionally winning bid. Failure to maintain the requisite activity level would result in the use of an activity rule waiver, if any, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

16. *Activity Rule Waivers and Reducing Eligibility.* When a bidder's activity in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver, if available. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

17. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility.

Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

18. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the specified activity requirement. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

19. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the proactive waiver function in the FCC auction bidding system) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round in which there are no new bids, no bid withdrawal (if bid withdrawals are permitted in this auction), and no proactive waiver will not keep the auction open. Comment is requested on the proposal that each bidder in Auction 104 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction.

20. *Reserve Price or Minimum Opening Bids.* Normally, a reserve price is an absolute minimum price below which a construction permit will not be sold in a given auction. IATF, MB and OEA propose to establish no separate reserve prices for the Auction 104 construction permits available in Auction 104.

21. A minimum opening bid is the minimum bid price set at the beginning of the auction

below which no bids are accepted. See 47 CFR 1.2104(c), (d). Attachment A of the *Auction 104 Comment Public Notice* lists a proposed minimum opening bid amount for each construction permit available in Auction 104. While minimum opening bid amounts for Auction 104 were determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data, to the extent such information is available, consideration of such factors for Auction 104 is complicated by a dearth of such transaction data, the fact that a permittee may opt to switch its intended use of such facility from LPTV to translator operation, or vice versa, and the lack of accurate data on the population that would be covered by each proposed facility. Consistent with 47 U.S.C. 309(j)(4)(f), IATF, MB and OEA seek comment on the minimum opening bid amounts specified in Attachment A of the *Auction 104 Comment Public Notice*.

22. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. Commenters should support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. IATF, MB and OEA particularly seek comment on factors that could reasonably have an impact on bidders' valuation of the broadcast spectrum, including the type of service offered, market size, population covered by the proposed broadcast facility, and any other relevant factors.

23. *Bid Amounts.* IATF, MB and OEA propose that, if the bidder has sufficient eligibility to place a bid on a particular construction permit in a round, an eligible bidder will be able to place a bid on that construction permit in any of up to nine different amounts. Under this proposal, the FCC auction bidding system interface will list the acceptable bid amounts for each construction permit.

24. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be a certain percentage higher. The percentage used for this calculation, the minimum acceptable bid increment

percentage, is multiplied by the provisionally winning bid amount, and the resulting amount is added to the provisionally winning bid amount. If, for example, the minimum acceptable bid increment percentage is 10%, then the provisionally winning bid amount is multiplied by 10%. The result of that calculation is added to the provisionally winning bid amount, and that sum is rounded using the Commission's standard rounding procedure for auctions. If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

25. The FCC will calculate the eight additional bid amounts using the minimum acceptable bid amount and an additional bid increment percentage. The minimum acceptable bid amount is multiplied by the additional bid increment percentage, and that result, rounded, is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. If, for example, the additional bid increment percentage is 5%, then the calculation of the additional increment amount is $(\text{minimum acceptable bid amount}) \times (0.05)$, rounded. The first additional acceptable bid amount equals $(\text{minimum acceptable bid amount}) + (\text{additional increment amount})$; the second additional acceptable bid amount equals $(\text{minimum acceptable bid amount}) + (2 \times (\text{additional increment amount}))$; the third additional acceptable bid amount equals $(\text{minimum acceptable bid amount}) + (3 \times (\text{additional increment amount}))$; etc. the results then will be rounded using the Commission's standard rounding procedures for auctions.

26. For Auction 104, IATF, MB and OEA propose to use a minimum acceptable bid increment percentage of 10%. This means that the minimum acceptable bid amount for a construction permit will be approximately 10% greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, IATF, MB and OEA proposed to use an additional bid increment percentage of 5%. IATF, MB and OEA seek comment on these proposals.

27. IATF, MB and OEA propose to retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid increment percentage, the additional bid increment percentage, and the number of acceptable bid amounts if circumstances so dictate. Further, IATF, MB and OEA propose to retain the discretion to do so on a construction-permit-by-construction-permit basis. IATF, MB and OEA also propose to retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, a \$1,000 limit could be set on increases in minimum acceptable bid amounts over provisionally winning bids. In this example, if calculating a minimum acceptable bid using the minimum acceptable bid increment percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid. IATF, MB and OEA seek comment on the circumstances under which such a limit should be employed, factors to be considered when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If IATF, MB and OEA exercise this discretion, they will alert bidders by announcement in the FCC auction bidding system during the auction. IATF, MB and OEA seek comment on these proposals

28. *Provisionally Winning Bids.* At the end of each bidding round, the bidding system will determine a provisionally winning bid for each construction permit based on the highest bid amount received. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids.

29. The auction bidding system assigns a random number to each bid when the bid is entered. This number is technically a pseudo-random number generated by an algorithm. If identical high bid amounts are submitted on a construction permit in any given round (i.e., tied bids), the FCC auction

bidding system will use a random number to select a single provisionally winning bid from among the tied bids. The tied bid with the highest random number wins the tiebreaker and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

30. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). Provisionally winning bids count toward a bidder's activity level for purposes of the activity rule.

31. *Bid Removal and Bid Withdrawal.* The FCC auction bidding system allows each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively unsubmits the bid. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder is no longer permitted to remove a bid.

32. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing a bid placed in a prior round that has become a provisionally winning bid. A bidder would be able to withdraw its provisionally winning bid using the withdraw function in the FCC auction bidding system. A bidder that withdraws its provisionally winning bid(s), if permitted in this auction, is subject to the bid withdrawal payment provisions of 47 CFR 1.2104(g) and 1.2109.

33. Based on the nature of the permits available in Auction 104 and on the experience with past auctions of broadcast construction permits, IATF, MB and OEA propose to prohibit bidders from withdrawing any bid after the close of the round in which the bid was placed. This proposal is made in light of the site- and applicant-specific nature and wide geographic dispersion of the permits available in this closed auction. It is unlikely that bidders will have a need to withdraw bids in this auction. Also,

bid withdrawals may encourage insincere bidding or increase opportunities for anti-competitive bidding in certain circumstances. Bid withdrawals, particularly those made late in this auction, could result in delays in licensing replacement LPTV/translator stations and disruption in providing broadcast service to the public. IATF, MB and OEA seek comment on their proposal to prohibit bid withdrawals in Auction 104.

C. Post-Auction Payments

34. *Interim Withdrawal Payment Percentage.* If bid withdrawals are permitted in Auction 104, a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that construction permit receives a higher bid or winning bid in a subsequent auction. In accordance with 47 CFR 1.2104(g)(1), when that final withdrawal payment cannot yet be calculated, the FCC imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

35. IATF, MB and OEA request comment on the proposal that the interim bid withdrawal payment be 20% of the withdrawn bid. Commenters advocating the use of bid withdrawals should also address the percentage of the interim bid withdrawal payment which may range from 3% to 20% of the withdrawn bid amount.

36. *Additional Default Payment Percentage.* Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment by the specified deadline, fails to make a full and timely final payment, or whose long-form application is not granted for any reason or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This default payment consists of a deficiency payment equal to the difference between the amount of the Auction 104 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the

defaulter's bid or of the subsequent winning bid, whichever is less.

37. Based on the nature of the service and the construction permits being offered, an additional default payment of 20% of the relevant bid is proposed for Auction 104. IATF, MB and OEA seek comment on this proposal.

V. PROCEDURAL MATTERS

A. Paperwork Reduction Act

38. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Therefore, it also does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. See 44 U.S.C. 3506(c)(4).

B. Ex Parte Rules

39. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's ex parte rules, 47 CFR 1.1200(a), 1.1206. While additional information is provided in the *Auction 104 Comment Public Notice* on the relevant reporting requirements, participants in Auction 104 should familiarize themselves with the Commission's ex parte rules.

VI. SUPPLEMENTAL INITIAL REGULATORY FLEXIBILITY ANALYSIS

40. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the 1997 Broadcast Competitive Bidding Notice of Proposed Rulemaking (NPRM), and other Commissions NPRMs (collectively, Competitive Bidding NPRMs) pursuant to which Auction 104 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) likewise were prepared in the 1998 Broadcast Competitive Bidding Order and other Commission rulemaking orders (collectively, Competitive Bidding Orders) pursuant to which Auction 104 will be conducted. The Incentive Auction Task Force (IATF), the Media Bureau (MB) and the Office of Economics and Analytics (OEA) have prepared this Supplemental IRFA of the possible significant economic impact on small entities of the policies and rules addressed in

the *Auction 104 Comment Public Notice*, to supplement the Commission's Initial and Final Regulatory Flexibility Analyses completed in the *Broadcast Competitive Bidding Order* and other Commission orders pursuant to which Auction 104 will be conducted. Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same filing deadlines for comments specified on the first page of the *Auction 104 Comment Public Notice*. The Commission will send a copy of the Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a).

41. *Need for, and Objectives of, the Public Notice.* The proposed procedures for the conduct of Auction 104 as described in the *Auction 104 Comment Public Notice* would constitute the more specific implementation of the competitive bidding rules contemplated by 47 CFR parts 1 and 73, adopted by the Commission in multiple notice-and-comment rulemaking proceedings, including the Commission's establishing in the underlying rulemaking orders additional procedures to be used on delegated authority. More specifically, the *Auction 104 Comment Public Notice* seeks comment on proposed procedures, terms and conditions governing Auction 104 and the post-auction payment processes, as well as seeking comment on the minimum opening bid amounts for 6 specified construction permits, and are fully consistent with the underlying rulemaking orders, including the *Broadcast Competitive Bidding Order* and other relevant competitive bidding orders.

42. Consistent with 47 U.S.C. 309(j)(3)(E)(i), the *Auction 104 Comment Public Notice* is intended to provide notice of and adequate time for Auction 104 applicants to comment on proposed auction procedures. To promote the efficient and fair administration of the competitive bidding process for all Auction 104 participants, including small businesses, IATF, MB and OEA seek comment on the following proposed procedures: (1) Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping rule (with discretion to exercise alternative stopping rules under certain circumstances); (2) A specific minimum opening bid amount for each construction permit available in Auction 104; (3) A specific number of bidding units for each construction permit; (4) A specific upfront payment amount for each construction permit; (5) Establishment of a

bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; (6) Use of an activity requirement so that bidders must bid actively during the auction rather than waiting until late in the auction before participating; (7) A single stage auction in which a qualified bidder is required to be active on 100% of its bidding eligibility in each round of the auction; (8) Provision of three activity rule waivers for each qualified bidder to allow it to preserve eligibility during the course of the auction; (9) Use of minimum acceptable bid amounts and additional bid increments, along with a proposed methodology for calculating such amounts, while retaining discretion to change their methodology if circumstances dictate; (10) A procedure for breaking ties if identical high bid amounts are submitted on a construction permit in a given round; (11) Whether to permit bid withdrawals in Auction 104; (12) Establishment of an interim bid withdrawal percentage of 20% of the withdrawn bid in the event bid withdrawals are permitted in Auction 104; and (13) Establishment of an additional default payment of 20% under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

43. *Legal Basis.* The Commission's statutory obligations to small businesses participating in a spectrum auction under the Communications Act of 1934, as amended (the Act), are found in 47 U.S.C. 309(j)(3)(B) and 309(j)(4)(D). The statutory basis for the Commission's competitive bidding rules is found in various provisions of the Act, including 47 U.S.C. 154(i), 301, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auction 104. The Commission has directed that OEA, in conjunction with MB, under delegated authority, seek comment on a variety of auction-specific procedures prior to the start of bidding in each auction.

44. *Description and Estimate of the Number of Small Entities to Which the Proposed Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed procedures, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small government jurisdiction. 5 U.S.C. 601(6). In

addition, the term small business has the same meaning as the term small business concern under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

45. The specific procedures and minimum opening bid amounts on which comment is sought in the *Auction 104 Comment Public Notice* will affect directly all applicants participating in Auction 104. There are a maximum of 14 individuals or entities that may become qualified bidders in Auction 104, in which applicant eligibility is closed. Therefore, the specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 104 Comment Public Notice* will affect only the 14 individuals or entities listed in Attachment A to the *Auction 104 Comment Public Notice* and that are the only parties eligible to complete the remaining steps to become qualified to bid in Auction 104. These specific 14 Auction 104 individuals or entities include firms of all sizes.

46. *Television Broadcasting.* This U.S. Economic Census category comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts. 13 CFR 121.201. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25 million or less, 25 had annual receipts between \$25 million and \$49,999,999 and 70 had annual receipts of \$50 million or more. Based on this data, OEA, in conjunction with MB, estimate that the majority of commercial television broadcast stations are small entities under the applicable size standard.

47. The Commission has estimated the number of licensed commercial television stations to be 1,373. Of this total, 1,270 stations (or about 92.5%) had revenues of \$38.5 million or less, according

to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in November of 2018, and therefore these stations qualify as small entities under the SBA definition.

48. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 388. These stations are non-profit, and therefore are considered to be small entities. 5 U.S.C. 601(4), (6).

49. According to Commission estimates, there are 2,295 LPTV stations, including Class A stations, and 3,654 TV translators. Given the nature of these services, it is presumed that all of these entities qualify as small entities under the SBA small business size standard. The SBA size standard data does not enable us, however, to make a meaningful estimate of the number of small entities that may participate in Auction 104.

50. In assessing whether a business entity qualifies as small under the SBA definition, business control affiliations must be included. 13 CFR 121.103(a)(1). The estimate of the number of small entities that might be affected by Auction 104 likely overstates the estimate because the revenue figure on which business concerns are based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which Auction 104 competitive bidding rules may apply does not exclude any radio station from the definition of a small business on these bases and is therefore over-inclusive to that extent. OEA, in conjunction with the Media Bureau, are unable at this time to define or quantify the criteria that would establish whether a specific LPTV station or TV translator is dominant in its field of operation. In addition, it is difficult to assess these criteria in the context of media entities and therefore estimates of small businesses to which they apply may be over-inclusive to this extent.

51. OEA, in conjunction with MB, are unable to accurately develop an estimate of how many of these 14 individuals or entities in this auction are small businesses based on the number of small entities that applied to participate in prior broadcast auctions because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is

the case in auctions of licenses for wireless services). OEA, in conjunction with MB, conclude, however, that the majority of Auction 104 eligible bidders would likely meet the SBA's definition of a small business concern.

52. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The *Auction 104 Comment Public Notice* proposes no new reporting, recordkeeping, or other compliance requirements for small entities or other auction applicants. The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. To participate in this auction parties will file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, there are additional compliance requirements for winning bidders. Thus, a small business that fails to become a winning bidder does not need to satisfy additional requirements of a winning bidder.

53. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

54. OEA, in conjunction with MB, intend that the proposals of the *Auction 104 Comment Public Notice* to facilitate participation in Auction 104 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures proposed for Auction 104 in

the *Auction 104 Comment Public Notice* should result in minimal economic impact on small entities. For example, prior to the auction, the Commission will hold a mock auction to allow eligible bidders the opportunity to familiarize themselves with both the bidding processes and systems that will be used in Auction 104. During the auction, participants will be able to access and participate in bidding via the Internet using a web-based system, or telephonically, providing two cost-effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of a telephone hotline for assistance with auction processes and procedures as well as a telephone technical support hotline to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction system. In addition, all auction participants, including small business entities, will have access to various other sources of information and databases through the Commission that will aid in both their understanding of and participation in the process. These mechanisms are made available to facilitate participation in Auction 104 by all eligible bidders and may result in significant cost savings for small business entities that utilize these mechanisms. These steps, coupled with the advance description of the bidding procedures in Auction 104, should ensure that the auction will be administered efficiently and fairly, thus providing certainty for small entities as well as other auction participants.

55. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

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